



(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Patent Application of:
Yoshikazu Okada et al.

Application No.: 10/810,491

Confirmation No.: 8127

Filed: March 26, 2004

Art Unit: 1742

For: METHOD FOR MANUFACTURING
THROWAWAY TIP AND APPARATUS FOR
ALIGNING GREEN COMPACT

Examiner: Scott R. Kastler

**PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants in the above-identified patent application have received a Notice of Abandonment, dated September 5, 2006, copy enclosed as Exhibit A, advising that the application is abandoned due to Applicant's failure to timely respond to the Final Office Action mailed July 1, 2005.

For the reasons set forth below, Applicants believe that the Notice of Abandonment is in error or due to actions by the U.S. Patent and Trademark Office (USPTO) and should be withdrawn.

It is believed that the evidence submitted herewith is an adequate showing that the Notice of Abandonment should be withdrawn.

09/22/2006 HGBREM1 00000087 10810491

03 FC:1201
04 FC:1202

400.00 OP
1500.00 OP

STATEMENT OF THE RELEVANT FACTS

A response to the Final Office Action was filed September 29, 2005. An Advisory Action was mailed October 21, 2005 noting that the Response did not place the application in condition for allowance. On December 23, 2005, a Notice of Appeal, a Request for a Pre-Appeal Brief Request for Review, a Pre-Appeal Brief, a petition for a three month extension of time with the requisite fee and a return postcard were filed. A Notice of Panel Decision from Pre-Appeal Brief Review (the "Notice") was mailed March 20, 2006 and is attached herewith as Exhibit B.

The Notice indicates that a:

Pre-Appeal Brief conference has been held. The Application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR §1.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

Applicants note that two months from the mailing of the Notice of Appeal is February 23, 2006 and one month from the mailing of the Notice is April 20, 2006. Since April 20, 2006 is the greater of the two terms, the response date is controlled from the mailing of the Notice. Further, extensions of time are governed by 37 CFR § 1.136, the relevant part states:

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in Sec. 1.17(a) are filed.

Thus, the period of response can be extended five (5) months past the period set for reply. The reply date set by the Notice and calculated above is April 20, 2006. Thus, the maximum period to reply ends September 20, 2006. Since the Notice of Abandonment was mailed September 5, 2006, it was improperly mailed and Applicants request that the holding of Abandonment be reversed and the present amendment, being timely filed with this petition, be entered.

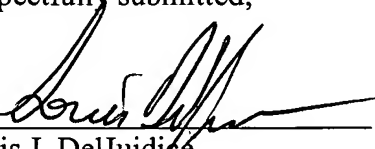
The Director is authorized to charge any fees due in connection with this Notice of Appeal to Deposit Account No. 04-0100.

CONCLUSION

Applicants respectfully submit that the present application is not abandoned and the enclosed Response is complete and timely filed on September 19, 2006. Applicants submit that the response date was miscalculated by the USPTO and respectfully submits that no petition fee is due and request that the holding of abandonment be withdrawn.

Dated: September 19, 2006

Respectfully submitted,

By 

Louis J. DelJuidice

Registration No.: 47,522

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Attorneys/Agents For Applicant



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,491	03/26/2004	Yoshikazu Okada	20154/0201085-US0	8127

7278 7590 09/05/2006

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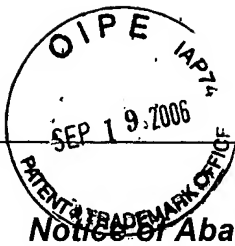
TO: L. DelGuidice
ATTY REVIEWED LOD
DATE: 9/14/06

EXAMINER	
KASTLER, SCOTT R 571-272-1243	
ART UNIT	PAPER NUMBER

1742

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Notice of Abandonment

Application No.

10/810,491

Examiner

Scott Kastler

Applicant(s)

OKADA ET AL.

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 01 July 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

ROY KING
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



UNITED STATES PATENT AND TRADEMARK OFFICE

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L.J. DeIudice

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10/810,491	03/26/2004	Yoshikazu Okada	20154/0201085-USO	8127

7278 7590 03/20/2006

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NEW YORK, NY 10150-5257

APPEAL Brief

DUE: *April 20, 2006*
Docketed on *3/21/06* by *LLG* for

Docketed without file ☐

Attorney *LJD*

EXAMINER

JENKINS, DANIEL J

ART UNIT	PAPER NUMBER
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1742


DATE MAILED: 03/20/2006

9/20/06

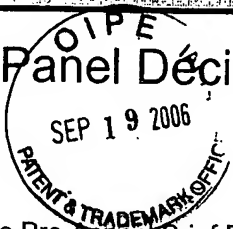


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APPEAL BRIEF
FILED 3/21/06
10/810,491

Application Number 	Application/Control No. 10/810,491 Daniel Jenkins	Applicant(s)/Patent under Reexamination OKADA ET AL. Art Unit 1742	
Document Code - AP.PRE.DEC			

Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed 12/23/05.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☐ Other:

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☒ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

☒ The panel has determined the status of the claim(s) is as follows:
 Claim(s) allowed: _____
 Claim(s) objected to: _____
 Claim(s) rejected: 1 and 3-17.
 Claim(s) withdrawn from consideration: _____

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☐ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) Roy King *Roy King*

(2) Carol Chaney *Carol Chaney*

(3) Daniel Jenkins *DJ*

(4) _____